

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Criminal Misc. No.M-39680 of 2018 (O&M)
Date of Decision: September 11, 2018**

Nanak Ram

.....PETITIONER(s).

VERSUS

State of Punjab

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Kamal Deep Singh Sidhu, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

This is petition under Section 482 Code of Criminal Procedure (for short-Cr.P.C.) for quashing of impugned order dated 21.08.2018 (Annexure P-5) passed by Judge, Special Court, Ludhiana in case FIR No.46 dated 11.03.2017 registered under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station GRP Ludhiana.

The prosecution moved application under Section 311 Cr.P.C. for permission to examine SI Inderjit Singh, who could not be examined and inadvertently given up. Learned trial Court vide order dated 21.08.2018 allowed the application with the observations as follows:-

“4. Perusal of the file shows that in the list of witnesses attached with the report under Section 173 Cr.P.C., there are two Inderjit Singh and learned Addl. PP for the State instead of giving up HC Inderjit Singh No.3530 has given up the other SI Inderjit Singh, who has verified the case property being SHO. The witness

sought to be examined is required for just decision of the case. As such, the application moved by learned Addl. PP for the State under Section 311 Cr.P.C. is allowed. SI Inderjit Singh be summoned for 12.09.2018. It is made clear that prosecution is granted only one opportunity to examine SI Inderjit Singh.”

Referring to the observations of Hon'ble Apex Court in case of ***Mohanlal Shamji Soni Vs. Union of India and another 1991 (3) R.C.R. (Criminal) 182***, learned counsel for the petitioner submits that SI Inderjit was given up by the prosecution and now the prosecution has sought to examine him just to fill up the lacuna after availing 21 opportunities to lead evidence.

As per trial Court, SI Inderjit is a material witness, who verified the case property being SHO and his examination is required for the just decision of the case. In case of ***Mohanlal Shamji Soni Vs. Union of India and another (supra)***, it was observed by Hon'ble Apex Court that under Section 311 Cr.P.C., the Court has ample power to summon, recall or re-examine any witness at any stage. The relevant observations of Hon'ble Apex Court as contained in para 18 of the judgment are reproduced as follows:-

“18. The next important question is whether Section 540 gives the court carte-blanche drawing no underlying principle in the exercise of the extra-ordinary power and whether the said Section is unguided, uncontrolled and uncanalised. Though Section 540 (Section 311 of the new Code) is, in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which they should be exercised, that

power is circumscribed by the principle that underlines Section 540, namely, evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means. Therefore, it should be borne in mind that the aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or capricious exercise of the power may lead to undesirable results. Further it is incumbent that due care should be taken by the court while exercising the power under this section and it should not be used for filling up the lacuna left by the prosecution or by the defence or to the disadvantage of the accused or the cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties.”

The very spirit of provisions of Section 311 Cr.P.C. is to authorise the Court to summon any person as witness at any stage of trial if the evidence of such person appears to be essential for the just decision of the case. The mere fact that SI Inderjit was given up at initial stage of trial is not to limit power of trial Court under Section 311 Cr.P.C. Specific observation has been given by the trial Court that recording of statement of SI Inderjit is required for the just decision of the case. Even otherwise, being the witness, who had verified the case property being SHO of the police station concerned, he is a material witness of the case and the trial Court has committed no error while allowing the application of the

prosecution. The summoning of this witness cannot be termed as filling up the lacuna.

Consequently, this petition has no merits. Dismissed.

September 11, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No